

## **UXinsight Notes Terms of Use (As of April 26, 2019)**

*Welcome to UXinsight Notes. These Terms of Use govern the access and use of our Website, our Platform and our Services. The Terms of Use agreement is between you and Userproof. By using our Services you accept the Terms of Use as set forth in this agreement.*

### **Article 1      Scope**

- 1.1 The Terms of Use apply to the Agreement and all use that User makes of the Service.
- 1.2 Userproof may amend these Terms of Use at any time. The User will be notified of any amendments by email and/or private message and/or upon logging in to the Service through the Website and/or upon using the Website. The new version of the Terms of Use will be available for viewing and downloading on the Website. If the User continues to use the Service after these Terms of Use have been amended or supplemented, the User thereby irrevocably accepts the amended or supplemented Terms of Use. If the User does not agree with the amended or supplemented Terms of Use, the User's exclusive remedy is to no longer use the Service and to terminate its Profile and the Agreement.
- 1.3 If any provision in these Terms of Use shall be held to be (partly) void or unenforceable, the other provisions of these Terms of Use will remain in full force and effect. In such a case, Userproof will replace the void or unenforceable provisions with new ones. In doing so, the purpose and meaning of the void or unenforceable provisions will be taken into account as far as possible.
- 1.4 These Terms of Use have been prepared in English and may have been translated into other languages. In case of a dispute, the English version shall have precedence.

### **Article 2      Use of the Service**

- 2.1 Userproof hereby grants the User a non-exclusive, non-transferable, limited right to access and use the Service by means of the Website and the Platform solely to acquire knowledge related to user experience research and/or sharing insights regarding user experience research.
- 2.2 The User acknowledges and agrees that Userproof does not pre-screen User Content posted or transmitted by means of the Service and that Userproof has no influence over the User Content provided by means of the Service. Userproof is not liable and/or responsible for the User Content provided by means of the Service and/or any use made of the Service by User.
- 2.3 Userproof shall have the right (but not the obligation), at its sole discretion, to review, edit, limit or refuse User Content posted or transmitted by means of the Service and/or to limit and/or refuse a User access and/or use of the Service, to remove any User Content that, according to Userproof, violates these Terms of Use and/or that it deems to be otherwise objectionable. Userproof may disclose your Personal Data and/or User Content to third parties where it believes, in good faith, that it is necessary to comply with a court order, ongoing judicial proceeding, criminal or civil subpoena, or other legal process or request by law enforcement authorities, or to exercise its legal rights of defend against legal claims.
- 2.4 Notwithstanding any other provisions of these Terms of Use, the use of the Service shall not be used to:

- a. include software such as viruses or Trojans that can damage or erase computers or data of Userproof and/or third parties or make it unavailable or inaccessible;
  - b. bypass technical security measures of the computer systems of Userproof or third parties;
  - c. involve unreasonable or disproportionate use of the infrastructure of the computer systems of Userproof or third parties or impede the functionality or functionalities of the Service;
  - d. involve manual or automated software, devices, or other processes to "crawl", "spider" or "scrape" any content of the Service;
  - e. constitute unauthorized or unsolicited advertising, junk, spam, bulk email, scam and/or phishing;
  - f. infringe any Intellectual Property Rights, privacy rights or any other rights of Userproof or a third party;
  - g. involve any illegal activities or activities that are contrary to morality or public order;
  - h. involve false or misleading information;
  - i. involve otherwise inappropriate use;
  - j. breach these Terms of Use; and/or
  - k. be unlawful in any way whatsoever;
- 2.5 The use of the Service is at the User's own expense and risk. The User is responsible for meeting the technical and functional requirements and using the electronic communication facilities that are necessary to be able to access and use the Service. The risk of loss, theft or damage to any of its data will at all times be borne by the User.

### **Article 3 Profile**

- 3.1 In order to be able to contribute to the Platform, Userproof has to create a Profile for User. When Userproof registered a Profile for User, User becomes a Contributor. If the Profile is secured with Credentials, Contributor is responsible for keeping his Credentials confidential. The Contributor is responsible and liable for all use made of the Service by means of his Profile. As soon as the Contributor knows or has reason to assume that his Profile has come into the hands of unauthorized persons, the Contributor should inform Userproof of this, notwithstanding his own obligations to take immediate effective measures himself, such as changing the password of his Profile.
- 3.2 Userproof accepts no liability for any damages resulting from unauthorized access to or use of the Service by the User or third parties.

### **Article 6 Additional Services**

- 6.1 Userproof is entitled to offer Additional Services to User.
- 6.2 The offer of Additional Services may contain a description, pictures, photographs, and/or other graphical displays such as the Userproof logo.
- 6.3 Prices for Additional Services will be quoted through the Service and/or in the offer. Prices are in euros and are inclusive of VAT, unless expressly provided otherwise.
- 6.4 The User has the obligation to inform Userproof immediately about any inaccuracies in the offer provided or the payment details described, including the price. The User cannot hold Userproof to any offer for Additional Services and/or price if the User should in all

reasonableness have known that this offer and/or the price are/is an obvious mistake or obvious error in writing.

6.5 Userproof is entitled to adjust its prices at all times.

6.6 Userproof is entitled to request a separate agreement for Additional Services.

## **Article 7 Intellectual Property Rights**

7.1 Userproof and/or its suppliers reserve all rights not expressly granted to the User in these Terms of Use. The User acknowledges and agrees that – except as specifically set forth in these Terms of Use – Userproof and its suppliers retain all rights, title and interest, including the Intellectual Property Rights, in and to the Service and/or Content as well as any modifications, adaptations or translations thereof. The User acknowledges and agrees that he does not acquire any rights therein, express or implied, except for the rights expressly granted under these Terms of Use.

7.2 The User is not permitted to sell, rent out, transfer or grant restrictive rights to the Service and/or Content, or to make it available to third parties in any way or for any purpose. The User will also refrain from granting third parties' access – remotely or otherwise – to the Service or to provide the Service to a third party.

7.3 In principle, the User retains all Intellectual Property Rights, if any, that vest in him with regard to any User Content he posts by means of the Service. The User agrees and acknowledges that by posting any User Content by means of the Service he automatically grants Userproof a royalty-free, unencumbered, world-wide, sub-licensable, non-exclusive right to use, reproduce, circulate and make public the content in connection with the Service.

## **Article 8 Database**

8.1 The collection of data by means of the Service is to be regarded as a database within the sense of Directive 96/6/EC on the legal protection of databases and the Dutch Databases Act (in Dutch: "*Databankenwet*"). Userproof and/or its licensors are the producer(s) of this database and in that capacity has/have the exclusive right to grant consent for the use of data from this database. The User may only use data from the database insofar as use is allowed pursuant to these Terms of Use. The User is not allowed, without the prior written consent of Userproof and/or its licensors, to retrieve and re-use a substantial part of the data of the database and/or retrieve and repeatedly and systematically re-use non-substantial parts of the data of the database within the sense of the Directive 96/6/EC and the Dutch Databases Act.

## **Article 9 Privacy**

9.1 During the use of the Service, the User may provide Personal Data to Userproof. These Personal Data will be saved and processed in accordance with the Privacy Statement, and the General Data Protection Regulation.

## **Article 10 Indemnities and interruptions**

10.1 Userproof does not warrant that the Service will be error free, complete or up-to-date at all times.

- 10.2 The User agrees that the Service only provides the functionality and other features as found in the Service at the time of use ("as is"). Userproof does not guarantee that the Service or any part thereof will be accessible at all times and without any interruptions or failures. Failures in the Service can occur as a result of failures in the internet connection or as a result of viruses and/or faults/defects. Userproof is not liable towards the User for any damage, loss or costs resulting or arising from the Service being (temporarily) unavailable, including but not limited to the loss of data or inability to access or use the Service.
- 10.3 Userproof is entitled to change and/or update the Service and replace the design and layout and/or any of the functionalities of the Service without any prior notification and without being obliged to pay any compensation whatsoever to the User.
- 10.4 Userproof is entitled to put the Service (temporarily) out of service and/or to reduce the use of it without any prior notification and without being obliged to pay any compensation whatsoever to the User, if in the opinion of Userproof this is necessary, for instance in connection with the reasonably required maintenance of the Service or due to force majeure. Force majeure includes – but is not limited to – site or building blockades, strikes, riots, civil disruption, war, terrorist acts, inclement weather, epidemic, specific work interruptions, delay in transportation, earthquake, fire, storm, flood, or water damage, delay in or cancellation of the delivery to Userproof of parts, goods or services ordered from third parties, or governmental, legal or regulatory restrictions.
- 10.5 The User is responsible and liable for all use he makes of the Service, including but not limited to the use of his Profile. The User indemnifies and holds Userproof harmless against any and all claims by third parties in connection with or resulting from the use that the User makes of the Service, a violation by the User of these Terms of Use, and/or any unlawful activities.

#### **Article 11      Limitation of liability**

- 11.1 Userproof's liability for attributable failure (in Dutch: "*toerekenbare tekortkoming*") to perform the Agreement or any other unlawful act (in Dutch: "*onrechtmatige daad*") will be excluded, to the extent allowed by a mandatory or peremptory rule of law.
- 11.2 The User's only remedy in the event of an attributable failure or an unlawful act of Userproof, is to discontinue the use of the Service and/or to delete his Profile and to terminate the Agreement.
- 11.3 In the event that Userproof is liable for damages under a mandatory or peremptory rule of law, the damage will be limited to an amount of EUR 100.00 per event (a series of connected events being considered as one event). In no event will Userproof's total, aggregate liability, exceed EUR 200.00.
- 11.4 Userproof's liability for consequential damages (in Dutch: "*indirecte schade*", "*gevolgschade*") arising out of, or in connection with the Agreement or these Terms of Use, such as, but not limited to, loss of profit, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, or other incidental, indirect, punitive or exemplary damages of any kind, independent of whether the User provides notice to Userproof of such potential injury, damages or loss, is excluded.

- 11.5 In any event, the User's right to claim under the Agreement, these Terms of Use, for an unlawful act or otherwise shall lapse one (1) year after the occurrence giving rise to the claim or action.
- 11.6 The limitations mentioned in the preceding paragraphs of this Article 11 shall not apply if and insofar as the damage or injury is the result of intent (in Dutch: "opzet") or gross negligence (in Dutch: "bewuste roekeloosheid") by Userproof or its managers.

#### **Article 12 Termination and remedies**

- 12.1 The User is entitled to terminate the Agreement at any time by discontinuing the use of the Service and/or by terminating the Profile.
- 12.2 In addition to the other remedies available to Userproof, Userproof is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the User, entitled to:
- a. temporarily or permanently terminate the User's Profile and his use of the Service in the event that Userproof, at its sole discretion, deems such termination necessary;
  - b. temporarily or permanently restrict or suspend the User's activities in connection with the Service;
  - c. partly or wholly edit, delete or refuse any User Content or services within the Service.
- 12.3 All provisions which are meant to survive the termination of the Agreement, including but not limited to all of the User's representations, warranties and indemnification obligations, shall survive such termination.

#### **Article 13 Third parties**

- 13.1 Userproof reserves its right to commission third party service providers and their authorized agents to perform any of the services under the Agreement and/or these Terms of Use, either in whole or in part.
- 13.2 The User is not entitled to transfer his rights and/or obligations under the Agreement or these Terms of Use to a third party.

#### **Article 14 Contact**

- 14.1 Any and all correspondence and communication between the User and Userproof may be undertaken in the Dutch or English language. In case the User does not understand the Dutch and/or English language, he must immediately inform Userproof of this.
- 14.2 Userproof can be contacted by means of the following contact details:

Userproof  
Reduitlaan 33  
4814 DC Breda  
The Netherlands  
info@uxinsightnotes.com

#### **Article 15 Applicable law and competent court**

- 15.1 These Terms of Use, the Agreement and the use of the Service are governed by the laws of the Netherlands. The applicability of the Vienna Convention on the Sale of Goods is expressly excluded.
- 15.2 All controversies, disputes or claims arising out of or relating to these Terms of Use, the Agreement and/or the use of the Service will be exclusively and finally settled by the competent civil court of Rechtbank Zeeland-West-Brabant, location in Breda, the Netherlands, unless a mandatory or peremptory rule of (international) law prescribes another competent court.

## Article 16 Definitions

- a. Additional Service: Additional, paid services or products provided by Userproof as described on the Website;
- b. Agreement: The agreement between Userproof and the User for access to and use of the Service and/or Additional Services;
- c. Content: All content provided by Userproof and/or its suppliers through the Service, including but not limited to images, blogs, (sponsored) articles, reports, podcasts, vacancies, interviews, trainings and comments;
- d. Contributor: A User of the Platform who has a Profile to contribute to the Platform;
- e. Credentials: The User's Profile name and password that may be required to access the Profile and use the Service;
- f. Intellectual Property Rights: All the intellectual property rights including but not limited to rights such as copyrights, trademark rights, patents, model rights, trade name rights, database rights and neighboring rights as well as the rights to know-how;
- g. Parties: The User and Userproof;
- h. Personal Data: Any data that directly or indirectly relates to a natural person, as meant in the General Data Protection Regulation;
- i. Platform: The UXinsight Notes platform available at the Website;
- j. Privacy Statement: Userproof's privacy statement available at [/Privacy-Statement-UXinsight-Notes-2019.pdf](#)
- k. Profile The personal profile created by Userproof for the Contributor;
- l. Service: All services provided by Userproof including but not limited to the access to and use of the Website and the Platform;

- m. Terms of Use: These terms of use that apply to any and all use of the Service. The Terms of Use can be downloaded through: [/Privacy-Statement-UXinsight-Notes-2019.pdf](#)
- n. User: The natural person or legal entity concluded the Agreement with Userproof; Any
- o. User Content: content provided by the User by means of the Service, including but not limited to profile information, images, blogs, (sponsored) articles, reports, podcasts, vacancies, interviews, trainings and comments;
- p. Userproof: The Dutch company Userproof, having its office at Reduitlaan 33 (4841 DC) Breda in the Netherlands;
- q. Website: The website on which the Platform is exploited, available at <https://www.uxinsightnotes.com>.

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